

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
<b>BIBLE BROADCASTING NETWORK, INC.</b>	)	FRN: 0006373559
	)	
Licensee of FM Translator Station	)	Facility ID No. 77191
K217EY, Laramie, Wyoming	)	NAL/Acct. No. MB-20074140187
	)	File No. BRFT-20050701ABZ

**MEMORANDUM OPINION AND ORDER**

**Adopted: February 28, 2011**

**Released: March 1, 2011**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. Bible Broadcasting Network, Inc. (“BBN”), licensee of the captioned FM translator station (the “Station”), filed a Petition for Reconsideration (the “Petition”) of the *Forfeiture Orders* issued to BBN for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station.<sup>1</sup> In this Memorandum Opinion and Order, we deny reconsideration and affirm the forfeiture issued by the Media Bureau, Audio Division (“Bureau”) in the amount of two hundred and fifty dollars (\$250) to BBN.

**II. BACKGROUND**

2. On February 12, 2007, the Bureau issued a Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture in the amount of one thousand five hundred dollars (\$1,500) to BBN with respect to FM translator station K217EY, Laramie, Wyoming for willfully violating Section 73.3539 of the Rules by failing to timely file a license renewal application for the Station.<sup>2</sup> As noted in the NAL, BBN’s renewal application for the Station was due on June 1, 2005, four months prior to the October 1, 2005 expiration date for the Station’s license.<sup>3</sup> However, BBN did not file the application until July 1, 2005.

3. In response to the NAL, BBN filed a “Response to Notice of Apparent Liability for Forfeiture and Petition for Reconsideration” (“Response”) on March 13, 2007 arguing that: (1) its failure to file the renewal application was not willful but unintentional; (2) the Commission improperly imposed the forfeiture for untimeliness, claiming that Section 1.80 of the Rules prescribes a forfeiture for failure to file a required form, rather than failure to *timely* file a required form; (3) its failure to timely file the license renewal application not willful as required by Section 503(b) of the Communications Act of 1934, as amended (“Act”);<sup>4</sup> (4) the Commission improperly dismissed its request for waiver of Section 73.3539 of

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<sup>1</sup> 47 C.F.R. § 73.3539.

<sup>2</sup> *Bible Broadcasting Network, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2691 (MB 2007) (“NAL”).

<sup>3</sup> *Id.* at 2691.

<sup>4</sup> 47 U.S.C. § 503(b).

the Rules, because if the Commission had waived the Rule, it could not have issued the forfeiture to BBN for its violation; and (5) although it did not claim an inability to pay the forfeiture amounts, the Commission should take BBN's noncommercial educational broadcaster ("NCE") status into consideration as justification for cancelling the forfeiture. On January 21, 2010, the Bureau issued a *Forfeiture Order* rejecting these arguments and finding that BBN had willfully violated Section 73.3539 of the Rules by failing to timely file a license renewal application for the Station. In the *Forfeiture Order*, the Bureau reduced the forfeiture issued to BBN *sua sponte* to two hundred and fifty dollars (\$250).<sup>5</sup> In response to the *Forfeiture Order*, BBN timely filed its Petition on February 22, 2010.<sup>6</sup>

4. In its Petition, BBN reiterates its arguments regarding the willfulness of its failure to timely file a renewal application for the Station, the Commission's authority to issue a forfeiture for failure to timely file required forms, and the use of BBN's NCE status as justification for further reduction or cancellation of the *Forfeiture Order*.<sup>7</sup> BBN also reiterates its claim that the Bureau should have waived Section 73.3539 of the Rules when it accepted BBN's late-filed renewal application, and it claims that the Bureau's failure to address its waiver request in the NAL is reversible error.<sup>8</sup> BBN argues that there is an unreasonable disparity of sanctions issued by the Bureau, citing *Logos Broadcasting Corporation*.<sup>9</sup> BBN claims the mere admonishment of the licensee in *Logos Broadcasting* for making false certifications to the Commission renders the assessment of the forfeiture at issue here arbitrary and capricious. Finally, BBN complains that the Commission relied on only its own precedent, not court precedent, in deciding to issue the *Forfeiture Order*. BBN asserts that the above reasons warrant cancellation of the forfeiture.

### III. DISCUSSION

5. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original order or raises changed circumstances or additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.<sup>10</sup> Here, BBN's Petition largely restates its earlier arguments. We have previously considered and rejected BBN's arguments regarding the meaning of the term willful under the Rules and the Act, the Commission's authority to issue forfeitures for failure to timely file required forms, and the use of BBN's NCE status as justification for further reduction of the forfeiture amount or cancellation of the *Forfeiture Order*. We will not grant reconsideration "to debate matters upon which the Commission has already deliberated and spoken."<sup>11</sup>

<sup>5</sup> *Bible Broadcasting Network, Inc.*, Forfeiture Order, 25 FCC Rcd 428, 430 (MB 2010) ("*Forfeiture Order*").

<sup>6</sup> Petition for Reconsideration, Wyoming Station (Feb. 22, 2010) ("Petition").

<sup>7</sup> Petition at 3-6.

<sup>8</sup> Petition at 3-4.

<sup>9</sup> *Logos Broadcasting Corporation*, Letter, 23 FCC Rcd 10202 (MB 2008) ("*Logos Broadcasting*"). See Petition at 6-7.

<sup>10</sup> See 47 C.F.R. § 1.106, *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966); see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003) ("*Lorain Journal*").

<sup>11</sup> *Lorain Journal*, 37 FCC at 686.

6. The forfeiture amount for the violation was assessed in accordance with Section 503(b) of the Act,<sup>12</sup> Section 1.80 of the Rules,<sup>13</sup> and the Commission's *Forfeiture Policy Statement*.<sup>14</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>15</sup>

7. As an initial matter, we disagree with BBN that our reliance on Commission precedent undermines our decision regarding the Station. Section 0.445 of the Rules specifically contemplates the citation of published Commission and staff-level decisions as precedent.<sup>16</sup> We find BBN's argument characterizing Commission decisions as mere administrative precedent unpersuasive and without support.

8. Additionally, we disagree with BBN's contention that we should have waived Section 73.3539 of the Rules when we accepted BBN's late-filed renewal application.<sup>17</sup> "[W]aiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>18</sup> Again, BBN claims its inadvertence provides a basis for waiver of the Rules. However, BBN's inadvertent failure to timely file a renewal application is not a special circumstance.<sup>19</sup> Furthermore, the Commission and the staff have accepted late-filed renewal application without granting a waiver of Section 73.3539 of the Rules.<sup>20</sup> We find BBN's waiver request unwarranted and its claim that the Commission cannot issue sanctions where it has accepted a late-filed application to be without support.

9. BBN claims that the *Forfeiture Order* should be cancelled because the staff failed to address BBN's waiver request in the NAL. The *Forfeiture Order* is further complicated by the erroneous statement that BBN's waiver request was properly dismissed in the NAL.<sup>21</sup> As BBN noted in its Response and Petition, BBN's waiver request was not addressed in the NAL.<sup>22</sup> However, despite the staff's misstatement regarding the dismissal of BBN's waiver request in the NAL, the staff did address BBN's waiver request in the *Forfeiture Order* and found that BBN's inadvertent failure to timely file its

<sup>12</sup> 47 U.S.C. § 503(b).

<sup>13</sup> 47 C.F.R. § 1.80.

<sup>14</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>15</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>16</sup> 47 C.F.R. § 0.445(e); *see also Saga Communications of New England, L.L.C.*, Memorandum Opinion and Order, 25 FCC Rcd 3289, 3292 (EB 2010) (stating that it is "well established that the Commission may rely on its precedents in the absence of controlling court opinions to the contrary").

<sup>17</sup> Petition at 3-4.

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969)).

<sup>19</sup> *See, e.g., Syracuse-Dunbar-Avoca School Dist., Syracuse, NE*, 18 FCC Rcd 22907, 22908 (WCB 2003) ("Applicant's assertion that it was a mistake that the [form] signature page was never sent is not a special circumstance warranting a waiver of the filing window").

<sup>20</sup> *See, e.g., Discussion Radio*, 19 FCC Rcd at 7437-38 (waiving Section 73.3539 of the Rules for the *limited* purpose of accepting licensee's late-filed renewal application); *see also Family Radio, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4108, 4109 n. 6 (MB 2007) ("In light of the acceptance and grant of the application, we need not act on the waiver request") ("*Family Radio*").

<sup>21</sup> *Forfeiture Order*, 25 FCC Rcd at 429.

<sup>22</sup> Response to Notice of Apparent Liability for Forfeiture and Petition for Reconsideration, Wyoming Station, at 3 (March 13, 2007); Petition at 3.

renewal application did not warrant waiver of the Rules.<sup>23</sup> Therefore, we conclude that the staff's misstatement in the *Forfeiture Order* is harmless error.<sup>24</sup> Furthermore, the Bureau has found no need to act on Section 73.3539 waiver requests after acceptance of a licensee's untimely filed renewal application in the past.<sup>25</sup> Here, the failure to address BBN's waiver request in the NAL made no difference in the substantive decision reached by the Bureau; therefore, the staff's failure to address the waiver request in the NAL amounts to harmless error.<sup>26</sup>

10. Finally, BBN asserts that the disparity between the sanctions issued for the violation at issue here and the sanctions issued for violations of Section 1.17 of the Rules<sup>27</sup> in *Logos Broadcasting* provide it with grounds for cancellation of the *Forfeiture Order*. BBN contends that the Commission cannot justify issuing a forfeiture for failure to timely file a license renewal application when it "merely admonished a licensee that made false certifications to the Commission."<sup>28</sup> However BBN mischaracterizes the decision. In *Logos Broadcasting*, the Bureau admonished a licensee for making false certifications to the Commission in violation of Section 1.17 of the Rules.<sup>29</sup> The statute of limitations prevented the Bureau from issuing a forfeiture to the licensee in *Logos Broadcasting*;<sup>30</sup> had the statute of limitations not run, the Bureau would have issued a notice of apparent liability for forfeiture for the violations identified, which included violations of Section 1.17 of the Rules.<sup>31</sup> We find that *Logos Broadcasting* has no bearing on this case.

11. Furthermore, it is well-established that the Commission enjoys "broad discretion in determining whether to impose sanctions in a given case."<sup>32</sup> The discretion exercised in Commission decision-making is reviewable by a court on the grounds that it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>33</sup> BBN has failed to show that the Commission abused its discretion in issuing the *Forfeiture Order*.

12. We have considered BBN's Petition in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that BBN willfully violated Section 73.3539 of the Rules. In light of the Bureau's earlier *sua sponte* reduction of the forfeiture amount from \$1,500 to \$250, we find no other mitigating circumstances that warrant cancellation or further reduction of the forfeiture. We find

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<sup>23</sup> *Forfeiture Order*, at 429-430.

<sup>24</sup> See, e.g., *Conditional License MMDS, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 15147, 15150 (2003) (upholding Commission decision where review showed previous decision was substantively correct even if previous decision was made for erroneous reason), citing, *Greater Boston Television, Inc. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971) ("Conditional License MMDS").

<sup>25</sup> See, e.g., *Family Radio*, supra at n. 20.

<sup>26</sup> See, e.g., *Conditional License MMDS*, 18 FCC Rcd 15147, 15150 (upholding Commission decision where review showed previous decision was substantively correct even if previous decision was made for erroneous reason), citing, *Greater Boston Television, Inc. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

<sup>27</sup> 47 C.F.R. § 1.17.

<sup>28</sup> Petition at 6-7.

<sup>29</sup> *Logos Broadcasting*, 23 FCC Rcd at 10212.

<sup>30</sup> *Id.* at 10206 ("the statute of limitations prohibits us from initiating a forfeiture in this case").

<sup>31</sup> *Id.*

<sup>32</sup> *Family Ministries, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 1418, 1419 (2003) (citing *Lorain Journal Co. v. FCC*, 351 F.2d 824, 830-31 (D.C. Cir. 1965), cert. denied sub nom. *WWIZ, Inc. v. FCC*, 383 U.S. 967 (1966).

<sup>33</sup> 5 U.S.C. § 706(2)(A); see, e.g., *Cellular Phone Taskforce v. FCC*, 205 F.3d 82, 89 (2d Cir. 2000).

that the *Forfeiture Order* issued to BBN is reasonable and consistent with previous decisions for failure to timely file a license renewal application for a translator station.

**IV. ORDERING CLAUSE**

13. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Bible Broadcasting Network, Inc. on February 22, 2010, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau